

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

John D. West, on Behalf of Himself and	)	
All Other Persons Similarly Situated,	)	
Plaintiffs,	)	Case No. 1:02-CV-0001
	)	
v.	)	
	)	
AK Steel Corp. Retirement Accumulation	)	District Judge Sandra S. Beckwith
Pension Plan,	)	
– and –	)	
AK Steel Corporation Benefit Plans	)	Magistrate Judge Timothy S. Black
Administrative Committee	)	
Defendants.	)	

**PLAINTIFFS' COMMENTS ON THE ADDITIONAL NOTICE  
TO THE NINETEEN CLASS MEMBERS WHO FILED AN OPT OUT REQUEST**

In an Order entered on July 25, 2005, the Court directed that an additional notice be sent to each of the nineteen individuals who filed an opt out request. (Doc. No. 120.) The Court also proposed a text for that notice, and provided that the parties may submit comments concerning the proposed text. (Doc. No. 120 at 3-5.) Class Counsel now timely submits that Plaintiffs have no modification to suggest to the Court's proposed text other than that an additional statement be inserted.

In a second Order entered on July 25, 2005, the Court directed the parties to submit a draft of a notice to the 92 individuals whose claims are to be excluded from this class action. (Doc. No. 119.) The Court specified that the notice to the 92 "should provide some reasonable estimate of the range of the potential recovery of whipsaw benefits that each individual might recover in this case, so that each individual can meaningfully weigh their

options.” (Doc. No. 119 at 9.) Plaintiffs respectfully suggest that the additional notice to the nineteen Opt-Outs should provide the same type of estimate, so that each Opt-Out informedly may decide whether or not to continue in this litigation. Accordingly, Plaintiffs respectfully propose that the following statement be added to the Court’s text:

Actuaries retained by the attorneys who represent the Class have calculated what each retiree could expect to receive if the Class’ claims in this litigation are upheld. Those estimates indicate that you would receive between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ if you were to rescind your “opt out” and remain a member of this suit’s Class. Such amounts are before an award, if any, of attorneys’ fees in favor of the Class and against the defendants, and before whatever fees and expenses, if any, the Court may allow to be paid to the attorneys representing the Class out of the amount awarded to the Class. If you have any questions about the amount of your possible recovery, or any other questions regarding this Notice or this class action, you may contact Class Counsel:

Thomas R. Theado  
Gary, Naegele & Theado, LLC  
446 Broadway  
Lorain, Ohio 44052-1797  
(440) 244-4809

The amounts to which the nineteen Opt-Outs would be entitled, if they were to remain in the suit and Plaintiffs’ claims are upheld, range as high as \$190,000. Privacy concerns (such as those legislated by the E-Government Act of 2002) preclude Class Counsel from here individually specifying the particular range for any of the Opt-Outs. However, each individual’s personalized estimate can readily be inserted into her or his additional notice as there are only nineteen to compose and mail.

Class Counsel further submits that, if the Court so wishes, his office will compose, print, and mail the additional notices to the nineteen Opt-Outs, in whatever form the Court

may direct, on whatever stationery or paper the Court wishes. Alternatively, Class Counsel will promptly provide the Court the mailing addresses for the nineteen Opt-Outs, and the dollar amounts pertinent to each Opt-Out's potential personal recovery, if the Court wishes to disseminate the additional notices.

Finally, Class Counsel respectfully informs the Court that one of the nineteen Opt Outs – Ronald Birch (Doc. No. 100) – is also one of the 92 individuals whose claims are to be excluded from this class action (Doc. No. 119). That fact should not preclude Mr. Birch from participating in the reconsideration process that is intended by the Court's additional notice to the Opt-Outs. Rather, Mr. Birch should be entitled, on an equal basis with each of the other nineteen Opt-Outs, to choose whether or not to be bound by, and benefit from, the decisions thus far made in this litigation.

Respectfully submitted,

s/ Thomas R. Theado  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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